

meaning of section 13(1)(d) of the Act. The ordinary dictionary meaning of the word "affix" as a transitive verb is to fix or fasten something on to another as well as to add something in writing so that the expression "prescribe marks or labels to be affixed" in section 13(1)(d) means not only the prescribing of labels or tags to be fixed or fastened on goods but also the prescribing of marks to be written on the goods. While paragraph 1 of the Price Controller's order mentions labels or tags paragraph 3 thereof states that every retailer of the articles mentioned in the schedule shall *indicate* on all such articles displayed for sale the grade and price of the goods in the languages mentioned therein. The requirement under paragraph 3 can be satisfied by a retailer only by marking on the goods mentioned in the schedule the grade and price of such goods in the three languages stated in the paragraph. Paragraph 3 thus prescribes a mark to be affixed by retailers on the goods within the provisions of section 13(1)(d) of the Price Control Act. The Price Control (Indication of Grade and Prices) Order, 1967, could have been better arranged and worded following as closely as possible the terminology used in the Price Control Act particularly section 13(1)(d) thereof so as to leave no room for any doubt or uncertainty. Nevertheless, I do find it difficult to say that taken as a whole the order does not serve its manifest purpose which is to prescribe marks or labels to be affixed by every retailer to such goods or containers thereof as are mentioned in the schedule indicating the grades and prices of those goods in the National Language, in English and in the language of the retailer.

I shall now come to the main point in issue in this appeal. It has long been held as a matter of law that evidence obtained as a result of an illegal or unlawful search does not affect its admissibility provided that the evidence so obtained is otherwise relevant to the case that is being heard. This proposition applies in general to both civil and criminal cases. In *Saminaathan v. Public Prosecutor*⁽²⁾ which was a case under the Betting Enactment — Aitken J. held that the legality or illegality of a person's arrest does not concern the court which is trying him and, in respect of certain documents that were seized by the police during the illegal search of the appellant's room, that the court was only concerned with the relevance of the documents seized and not with the manner in which the police obtained possession of them. Buhagiar J. in the case of *Public Prosecutor v. Tan Keng Siew*⁽³⁾ and Thomson J. (as he then was) in the case of *Wong Liang Nguk (f) v. Public Prosecutor*⁽⁴⁾ have also expressed a similar view. As was stated by Lord Goddard in the Privy Council case of *Kuruma v. The Queen*:⁽⁵⁾

"the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained."

In the present case the evidence relating to the seizure and the subsequent production of the goods at the trial was relevant evidence to the matters in issue and this evidence was, therefore, admissible notwithstanding that it was obtained illegally and not in compliance with the provisions of section 14(1)(a) and (b) of the Price Control Act. The learned magistrate was wrong when he held that by reason of the illegal entry and search the evidence pertaining thereto was in-

A admissible. The appeal is allowed and I direct the learned magistrate to call upon the defence.

Appeal allowed.

Solicitors: Syarikat Atma Singh Gill & Gill.

B

**PERIASAMY s/o KARUPPAN & ORS. v.
NATIONAL UNION OF PLANTATION
WORKERS & ORS.**

[O.C.J. (Abdul Hamid J.) March 14, 1975]

[Kuala Lumpur — Civil Suit No. 918 of 1974]

C

Injunction — Trade unions — Domestic remedies — Jurisdiction of court.

The applicants were members of a trade union. The applicants sued for an injunction to restrain the respondents from taking or holding or remaining in office as executive members of the union, on the ground that their election was illegal. The matter was not referred to the Registrar of Trade Unions for a decision as required by the Constitution of the Union. The respondents raised as a preliminary objection the applicants' entitlement to sue.

D

Held: the applicants ought to have exhausted all domestic remedies before coming to court.

Cases referred to:-

E

- (1) *Tharmalingam v. Sambanthan* [1961] M.L.J. 63, C.A.
- (2) *Kolandaisamy v. Annamalai and The Harbour Trade Union (Selangor) Port Swettenham* [1968] 1 M.L.J. 222.
- (3) *Muthuraku v. Kuala Lumpur Municipality Workers Trade Union* [1973] 1 M.L.J. 206, F.C.

CIVIL SUIT.

Karam Singh Veriah for the plaintiffs.

F

D. P. Xavier (G. Vadiveloo with him) for three defendants.

G

Abdul Hamid J.: By Notice of Motion of August 14, 1974 the applicants/plaintiffs asked for an injunction to restrain Dr. P. P. Narayanan second defendant, G. Perumal third defendant, and the executive council from taking or holding or remaining in office as executive council members on the ground that there was illegality in their election held on May 18, 19 and 20, 1972 as set out in the affidavit in support of the Notice of Motion.

H

On October 8 the respondents/defendants gave notice of preliminary objection stating that the court has no jurisdiction to hear the Notice of Motion as the applicants, as members of the union, have not exhausted all domestic remedies as provided for in the union's constitution.

I

On the day of the hearing of the Notice of Motion Mr. D. P. Xavier counsel for the respondents addressed the court on the preliminary objection. He submitted that where there was a dispute between a member and union domestic remedies must first of all be exhausted before referring the matter to court.

In *Tharmalingam v. Sambanthan*⁽¹⁾ Thomson C.J. (as he then was) hearing an appeal from the appellant, a member of the union, who sought court's declaration that his suspension from membership was null and void held that —

"it was a condition precedent that the appellant should resort to the domestic remedies provided before resorting to the courts." A

Mr. Xavier referred to the case of *Kolandaisamy v. Annamalai and The Harbour Trade Union (Selangor) Port Swettenham*⁽²⁾ where Gill J. (as he then was) said —

"as the rules of the union provided that any dispute between a member and the union should be decided by reference to arbitration, the only way in which such dispute could come before the High Court was by way of a case stated for its opinion on any question of law as provided under section 45 of the Trade Unions Ordinance. Therefore in this case the court had no jurisdiction to hear and adjudicate." B

Mr. Xavier also drew my attention to *Muthuraku v. Kuala Lumpur Municipality Workers Trade Union*⁽³⁾ C where Ong C.J. (as he then was) held that —

"under the rules of the trade union the dispute could only be referred to the Registrar of Trade Unions by consent of the parties, and as the appellant did not agree to do so, he was entitled to refer the matter to the court."

Mr. Karam Singh Veriah counsel for the applicants said that parties cannot be forced to go before the Registrar of Trade Unions. D

There is something in what Mr. Karam Singh Veriah said but to my mind it is quite apparent that the applicants had not even applied their minds to the question of reference to the Registrar of Trade Unions for them to say that they cannot be forced to go before the Registrar. In the present case, the constitution and rules of the National Union of Plantation Workers provides that —

"...a dispute connected with (a) the election of officers of the Union; or (b) the accounts and funds of the Union; or (c) the non-compliance with any Rule of the Union, the parties to the dispute may, by consent, refer the dispute to the Registrar of Trade Unions." E

I am of the view that the applicants ought to have exhausted all the domestic remedies before coming to court. F

In the present case it is also clear that the applicants had done nothing for about two years and six months. If they had any genuine complaint they ought to have referred the matter to the Registrar of Trade Unions or alternatively instituted court action against the union immediately or within reasonable time. G

It is my judgment that the applicants have not acted *bona fide*. There was a very long delay and no valid reason was given for such delay. H

It is my considered judgment that this is not a proper case for this court, in exercising its discretionary power, to grant the order sought.

The motion was therefore dismissed with costs.

Motion dismissed. I

WAH LOONG (JELAPANG) TIN MINE SDN. BHD. v. CHIA NGEN YIOK

[O.C.J. (Abdoolcader J.) April 4, 1975]
[Ipoh — Civil Suit No. 83 of 1974]

Practice and Procedure — Injunction — Interim injunction — Mandatory injunction — Principles applicable — Relief sought practically answers whole claim.

There is no reason when an interim or interlocutory injunction is either refused or later discharged why a subsequent application cannot be made in the light of the changed circumstances or when otherwise so warranted. Indeed it is settled law that when such an injunction is either refused or dissolved as the case may be, on the grounds that material facts had not been disclosed, the plaintiff nonetheless does not become anathema for all purposes but may, if he wishes make application *de novo*.

Sometimes however the circumstances in which an interlocutory injunction is made are such that if an interlocutory injunction is granted the benefit or advantages which the plaintiff thereby receives are all, or practically all, the benefit or advantages which are sought to be secured at the final hearing. It does not follow that in such a case an interlocutory injunction will be refused. The question remains one of the balance of convenience in all the circumstances.

An interlocutory mandatory injunction is never granted before trial save in exceptional and extremely rare cases.

Cases referred to:-

- (1) *W. Edge & Sons Ltd. v. Niccolls Ltd.* [1911] 1 Ch. 1, 9.
- (2) *Hubbard v. Vosper* [1972] 2 Q.B. 84, 96, 98.
- (3) *Evans Marshall & Co. Ltd. v. Bertola S.A. & Anor.* [1973] 1 W.L.R. 349, 379.
- (4) *Jones v. Pacaya Rubber & Produce Co. Ltd.* [1911] 1 K.B. 455, 457.
- (5) *Taxaco Ltd. v. Mulberry Filling Station Ltd.* [1972] 1 All E.R. 513.
- (6) *Inter-Continental Mining Co. Sdn. Bhd. v. Societe des Etains de Bayas Tudjuh* [1974] 1 M.L.J. 145.
- (7) *Leong Chek Pong & Anor. v. Lee Chick Yet* [1964] M.L.J. 209.
- (8) *Lim Kim Choy v. Wong Chow* [1952] M.L.J. 20.
- (9) *Wong Chow v. Looi Kim Choy* [1953] M.L.J. 81.
- (10) *Willmott v. Barber* (1880) 15 Ch. D. 96.
- (11) *Warmington & Anor. v. Miller* [1973] 1 Q.B. 877.
- (12) *Fountain Forestry Ltd. v. Edwards & Anor.* [1974] 2 W.L.R. 768.
- (13) *The Mogul Steamship Company v. McGregor, Gow, & Co.* (1885) 15 Q.B.D. 476.
- (14) *Woodford v. Smith* [1970] 1 W.L.R. 806.

CIVIL SUIT.

Colin R. Clark for the plaintiffs.

J. R. Devadas for the defendant.

Abdoolcader J.: There are before me cross applications by the plaintiffs and the defendant for interlocutory injunctions in a matter in which such applications would seem to be the order of the day, as, quite apart from these two applications, there have been two other applications, in one of which an injunction was granted but subsequently discharged and in the other an injunction was granted subsequent to and pending the hearing of the present two applications. I would have thought, like Cozens-Hardy M.R. in *W. Edge & Sons Limited v. Niccolls Limited*,⁽¹⁾ that in the circumstances the court ought to have been asked to grant not interlocutory injunctions but a speedy trial but unfortunately counsel on both sides had frankly to admit when I raised this that the action is not yet